

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAB and ASB, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONALD ANTONIO BROOKS,

Respondent-Appellant.

UNPUBLISHED

May 27, 2003

No. 242487

Wayne Circuit Court

Family Division

LC No. 00-386237

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Donald Brooks appeals as of right the trial court's order terminating his parental rights to his children DAB and ASB pursuant to MCL 712A.19b(3)(c)(i) and (g).¹ We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

In early 2000, the FIA received information that a half-sister of DAB and ASB was neglected and had been abandoned when the family moved to a new residence. In February of 2000, the FIA filed a petition seeking temporary custody of all three children. The petition alleged that the family lived in a home that lacked heat and electricity. The petition also alleged that the half-sister was neglected in that Dajuana Owens had ignored her need for eyeglasses, and that the half-sister had been abandoned when the family moved. The children were placed in foster care.

At a bench trial held on in May of 2000, Owens admitted that the family residence lacked heat. She stated that when the half-sister was in her custody the child did not come home from school on occasion. Owens indicated that on those occasions she assumed that the half-sister was spending the night with her brother. Owens admitted that the half-sister was severely

¹ Dajuana Owens, the mother of the children, is deceased. Brooks was convicted of involuntary manslaughter, MCL 750.321, in connection with her death, and was sentenced to five to fifteen years in prison.

visually impaired without glasses. The trial court made the children temporary wards. The evidence showed that Brooks and the FIA had entered into a parent-agency agreement. The agreement required Brooks to complete parenting classes, complete a substance abuse assessment and follow any treatment recommendations, submit to random drug screens, obtain suitable housing, maintain a legal source of income, and attend counseling. The trial court ordered Brooks to comply with the agreement.

The trial court held a dispositional review hearing in August of 2000. Because the evidence at that hearing showed that Brooks was not complying with the parent-agency agreement, the trial court ordered that the children remain in foster care. At a permanency planning hearing in November of 2000, the trial court was informed that Brooks had been hospitalized. The trial court gave Brooks an additional ninety days to work on his parent-agency agreement.

The trial court held a second permanency planning hearing in February of 2001. Ayesha Smith-French, a foster care worker, testified that Brooks was in partial compliance with the parent-agency agreement. Owens was working; however, Brooks remained unemployed. The trial court ordered the FIA to file a petition to terminate the parental rights of Brooks and Owens

However, when the FIA filed this petition, the trial court dismissed it against both Brooks and Owens on the ground that Owens was complying with the parent-agency agreement.

The trial court held a third permanency planning hearing in October of 2001. The trial court was informed that Owens had died, and that Brooks had been charged with murder in connection with her death. The trial court ordered that the children remain in foster care. The trial court held a fourth permanency planning hearing in January of 2002. The trial court ordered the FIA to file a petition to terminate Brooks' parental rights to DAB and ASB and ordered that the half-sister remain in the care of her maternal grandmother. The trial court held a fifth permanency planning hearing in April of 2002. The FIA indicated that it intended to proceed with termination of Brooks' parental rights to DAB and ASB. The trial court placed the half-sister with her father and dismissed her from wardship.

The trial court held a permanent custody hearing in May of 2002. Brooks attended the hearing in person. Smith-French testified that Brooks had been incarcerated since August or September of 2001 and was awaiting trial on charges stemming from Owens' death. Smith-French testified that before Brooks was incarcerated, he was not in compliance with the parent-agency agreement. Brooks did not provide verification of completion of parenting classes, and did not complete the counseling for which he had received referrals. Brooks did not maintain suitable housing, and visited the children only sporadically. Further, Brooks did not complete a substance abuse assessment, and submitted less than one-half of the required random drug screens.

Smith-French indicated that she supplied Brooks with bus tickets to enable him to take advantage of the various services offered to him. She stated that she gave Brooks bus tickets whenever he requested them. Smith-French stated that to the best of her knowledge Brooks had not contacted the children by mail or telephone since he was incarcerated. She stated that Brooks never gave her a reason for his failure to comply with the various provisions of the parent-agency agreement. Smith-French stated that prior to his incarceration Brooks was living

with his uncle. Brooks did not propose this residence as a suitable placement for the children. Smith-French acknowledged that Brooks had a legal source of income via social security payments.

Brooks testified that he had completed parenting classes and had presented the certificate of completion to Smith-French. Brooks stated that he wanted DAB and ASB placed with his sister. Brooks admitted that he did not comply with various aspects of the parent-agency agreement because he wanted Owens to regain custody of the children. Brooks asserted that Smith-French did not provide him with a sufficient number of bus tickets to enable him to fulfill all of his obligations under the parent-agency agreement. Brooks stated that he was unable to complete a substance abuse assessment because he did not have proper identification.

Following this testimony, the trial court found that clear and convincing evidence existed to terminate Brooks' parental rights. The trial court found that the evidence showed that Brooks made very little effort to comply with the parent-agency agreement, that he had not rectified the conditions that led to the children being removed from the home, and that it was not likely that he could provide proper care or custody for the children within a reasonable time. The trial court found that termination of Brooks' parental rights was in the children's best interests.

II. Standard Of Review

We review a trial court's decision to terminate parental rights for clear error.² If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.³ We review the trial court's decision regarding the child's best interests for clear error.⁴

III. The Trial Court's Decision

We conclude that the trial court did not clearly err in finding that the FIA established by clear and convincing evidence the existence of one or more statutory grounds for the termination of Brooks' parental rights. The children were taken into custody because the family home was unsuitable and because a half-sibling's health needs were being neglected.⁵ At the time of the permanent custody hearing Brooks was incarcerated and was awaiting trial in connection with Owens' death. The evidence produced at the permanent custody hearing showed that prior to his incarceration Brooks had taken no steps to secure suitable housing for the children, and had made only a minimal effort to comply with other aspects of the parent-agency agreement. Brooks did not provide an acceptable reason for his failure to comply with the parent-agency agreement, and failed to offer a viable plan for the children during his incarceration. The trial

² MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

³ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

⁴ *In re Trejo*, *supra* at 356-357.

⁵ Brooks had no parental rights to that child.

court did not clearly err in finding that termination of Brooks' parental rights was warranted on the grounds that the conditions that led to adjudication continued to exist and were unlikely to be rectified within a reasonable time⁶ and that Brooks failed to provide proper care or custody for the children and would be unable to do so within a reasonable time.⁷ The evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests.⁸

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

⁶ MCL 712A.19b(3)(c)(i).

⁷ MCL 712A.19b(3)(g).

⁸ MCL 712A.19b(5); *In re Trejo, supra* at 353-354.